



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

501.00-00 Exemption From Tax on Corporations, Certain Trusts, etc. (Exempt v. Not Exempt)

501.09-00 Voluntary Employees' Beneficiary Associations

Legend:

Trust =

Association =

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This is in reply to your letter dated October 3, 2006, and subsequent correspondence, submitted on behalf of Trust, concerning whether providing benefits to domestic partners will adversely affect Trust's exemption under section 501(c)(9) of the Internal Revenue Code ("Code").

Trust has received an exemption letter from the Internal Revenue Service, stating that it is tax-exempt under section 501(c)(9) of the Code. Trust was established to provide health and insurance benefits to members, employees and dependents of members and employees of the Association. Health benefits include medical, hospital, dental, vision, and prescription drugs. Insurance benefits include disability, long term care and group life insurance. All of these benefits are represented to be permissible benefits under sections 1.501(c)(9)-3(a) through (e) of the Income Tax Regulations ("regulations"). Trust represents that the health benefits and the group life insurance benefits are accounted for separately.

Trust represents that some of the covered beneficiaries are domestic partners who satisfy the definition of dependent under section 152 of the Code and section 1.501(c)(9)-3(a) of the regulations. Trust determines whether a domestic partner is a dependent based on written and notarized certifications made by the employee and partner.

Trust wishes to provide benefits to domestic partners who do not meet the definition of dependent under section 152 of the Code and section 1.501(c)(9)-3(a) of the regulations. Trust describes the amount of benefits it will provide to non-dependent partners as de minimis. Trust represents that the total amount of impermissible benefits it will provide in a plan year, including health benefits to non-dependent domestic partners, will not exceed three percent of the total of all benefits it provides in the plan year to all beneficiaries of the Trust. Trust recognizes that where the domestic partner is not a dependent of the member or employee, the fair market value of the domestic partner's health coverage is income and wages to the member or employee.

Rulings Requested:

1. The Trust meets the tax-exempt requirements of section 501(c)(9) of the Code if it provides permissible benefits, without limitation, to domestic partners who are dependents within the meaning of section 152 of the Code and section 1.501(c)(9)-3(a) of the regulations.
2. The Trust's tax-exempt status under section 501(c)(9) of the Code will not be jeopardized if impermissible benefits are provided to domestic partners who are not dependents within the meaning of section 152 of the Code and section 1.501(c)(9)-3(a) of the regulations, as long as the total amount of impermissible benefits is three percent or less of the total of all benefits paid to all beneficiaries of the Trust in the plan year.

Law:

Section 106 of the Code provides that an accident or health plan is an arrangement for the payment of amounts to employees in the event of personal injuries or sickness.

Section 1.106-1 of the regulations provides that the gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by him, his spouse, or his dependents, as defined in section 152.

Section 104(a)(3) of the Code provides that, except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical expenses) for any prior taxable year, gross income does not include amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not included in the gross income of the employee, or (B) are paid by the employer).

Section 105(a) of the Code provides that, except as otherwise provided in section 105, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in the gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includable in the gross income of the employee, or (2) paid by the employer.

Section 105(b) of the Code provides that, except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical expenses) for any prior taxable year, gross income does not include the amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, and his dependents (as defined in section 152).

Coverage under an accident or health plan for personal injuries or sickness incurred by individuals other than the employee, his or her spouse, or his or her dependents, as defined in section 152, is not excludable from the employee's gross income under section 106. In addition, reimbursements received by the employee through an employer-provided accident or health plan are not excludable from the employee's gross income under section 105(b) unless the reimbursements are for medical expenses incurred by the employee, his or her spouse, or his or her dependents, as defined in section 152. However, reimbursements that are not excludable under section 105(b) may be excludable under section 104(a)(3) if they are attributable to employer contributions that were included in the employee's gross income.

Section 501(c)(9) of the Code provides that the organizations exempt from income tax under section 501(a) of the Code include a voluntary employees' beneficiary association (VEBA) providing for the payment of life, sick, accident or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-3(a) of the regulations provides that, for purposes of section 501(c)(9) of the Code, dependent means the member's spouse; any child of the member or the member's spouse who is a minor or a student; any other minor child residing with the member; and any other individual who an association, relying on information furnished to it by a member, in good faith believes is a person described in section 152(a) of the Code. It also provides that the life, sick, accident or other benefits provided by a VEBA must be payable to its members, their dependents, or their designated beneficiaries and that a VEBA is not operated for the purpose of providing life, sick, accident, or other benefits unless substantially all of its operations are in furtherance of the provision of such benefits. Further, an organization is not described in section 501(c)(9) if it systematically and knowingly provides benefits (of more than a de minimis amount) that are not permitted by paragraphs (b), (c), (d), or (e) of this section.

Sections 1.501(c)(9)-3(b) through (e) of the regulations detail the types of benefits that a tax-exempt VEBA may provide as well as who is eligible to receive the benefits. These benefits include life, sick and accident, and certain other benefits (“permissible benefits.”)

Section 1.501(c)(9)-3(b) defines a life benefit as a benefit (including a burial benefit or a wreath) payable by reason of the death of a member or dependent.

Section 1.501(c)(9)-3(c) defines sick and accident benefits to mean amounts furnished to or on behalf of a member or a member’s dependents in the event of illness or personal injury to a member or dependent.

Section 1.501(c)(9)-3(d) provides that the term “other benefits” includes only benefits that are similar to life, sick, or accident benefits. A benefit is similar to a life, sick, or accident benefit if:

- (1) It is intended to safeguard or improve the health of a member or a member’s dependents, or
- (2) It protects against a contingency that interrupts or impairs a member’s earning power.

Section 1.509(c)(9)-(e) provides examples of nonqualifying benefits, which are benefits not described in paragraphs (d) or (e) as being other benefits.

Analysis:

Ruling One:

The issue is whether Trust may maintain its tax-exempt status under section 501(c)(9) of the Code if it provides health benefits to domestic partners who meet the definition of dependent under section 152(a) of the Code and section 1.501(c)(9)-3(a) of the regulations.

Section 152(a) of the Code defines the term “dependent” to include, among others, any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer: sons and daughters; stepsons and stepdaughters; nieces and nephews; aunts and uncles; in-laws; and an individual (other than the spouse) who, for the taxable year, has as his/her principal place of abode the home of the taxpayer and is a member of the taxpayer’s household. Section 1.501(c)(9)-3(a) of the regulations allows a tax-exempt VEBA to provide permissible benefits to individuals “who an association, relying on information furnished to it by a member, in good faith believes is a person described in section 152(a) of the Code.”

Trust represents that it is providing permissible benefits to domestic partners who meet the definition of dependent set forth in section 152(a) of the Code. Trust requires notarized certification of the financial, residential, and other factors in determining whether domestic partners meet the definition of dependent. Under these facts, Trust does not jeopardize its tax-exempt status under section 501(c)(9) of the Code by

providing permissible benefits to domestic partners who meet the definition of dependent set forth in section 152(a) of the Code and as dependents within the meaning of section 1.501(c)(9)-3(a) of the regulations. Any permissible benefits provided to dependents are not "impermissible" benefits described in section 1.501(c)(9)-3(a) of the regulations.

Ruling Two:

The issue is whether Trust may provide impermissible benefits to non-dependent domestic partners without adversely affecting Trust's tax-exempt status under section 501(c)(9) of the Code.

Section 1.501(c)(9)-3(a) of the regulations allows an exempt VEBA to provide a de minimis amount of benefits that are not permitted by paragraphs (b), (c), (d), or (e) of section 1.501(c)(9)-3(a).

Trust describes the amount of benefits it will provide to non-dependent domestic partners as de minimis. Trust represents that the total amount of impermissible benefits it will provide in a plan year, including health benefits to non-dependent domestic partners, will not exceed three percent of the total of all benefits it provides in the plan year to all beneficiaries of the Trust. Under these facts, Trust providing impermissible benefits of three percent or less of the total of all benefits provided by Trust in a plan year will not adversely affect the tax-exempt status of the Trust under section 501(c)(9) of the Code.

Rulings:

Based on the information submitted, representations made, and the authorities cited above, we conclude as follows:

1. The Trust meets the tax-exempt requirements of section 501(c)(9) of the Code if it provides permissible benefits, without limitation, to domestic partners who are dependents within the meaning of section 152 of the Code and section 1.501(c)(9)-3(a) of the regulations.
2. Trust may provide benefits to domestic partners who are not dependents within the meaning of section 152 of the Code and section 1.501(c)(9)-3(a) of the regulations without adversely affecting Trust's tax-exempt status under section 501(c)(9) of the Code provided the total amount of impermissible benefits provided by Trust in a plan year is three percent or less of the total of all benefits provided by Trust in the plan year to all beneficiaries. In addition, the Trust will, in accordance with applicable law, include in the gross income of members or employees the fair market value of the health coverage for domestic partners who are not dependents of the members or employees.

This ruling is conditioned on the understanding that there will be no material changes in the facts upon which it is based.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Because this letter could help resolve any future questions about tax consequences of your activities, you should keep a copy of this ruling in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney and Declaration of Representative currently on file with the Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Manager, Exempt Organizations
Technical Group 2

Enclosure: Notice 437